



▲ California Indian Basketweavers Association ▲

June 1, 2003

MAIN OFFICE

PO Box 2397
Nevada City, CA 95959
Phone: 530/478-5660
Fax: 530/478-5662
Email: ciba@ciba.org

NORTHWESTERN FIELD OFFICE

PO Box 1496
Willow Creek, CA 95573
Phone: 530/629-4567
Fax: 530/629-1187
Email: nwfo@ciba.org

BOARD OF DIRECTORS

Jennifer D. Bates, Chair
(N. Mewuk)
Tuolumne

Wendy Ferris-George
(Hupa/Yurok/Karuk/Chemeriko)
Hoopa

Christi Gabaldon
(Mishewal Wappo)
Santa Rosa

Don Hankins
(Miwok/Osage)
Sacramento

L. Frank Manriquez
(Tongva/Ajachemem)
Santa Rosa

Julia Bogany
(Gabrielino/Tongva)
San Bernardino

Kathy Wallace
(Karuk/Yurok/Hoopa)
Fairfield

Lucy Parker
(Yosemite Miwok/Mono Lake
Paiute/Kashaya Pomo)
Lee Vining

Florine Fern Bates
(Yurok)
Klamath

Dixie Rogers
(Karuk)
West Sacramento

Diania Caudell
(Luiseno)
Escondido

Paul Helliker, Director
Department of Pesticide Regulation
P.O. Box 4015
Sacramento, CA 95812-4015

Re: Environmental Justice Implementation Plan

Dear Mr. Helliker,

The California Indian Basketweavers Association (CIBA) is a state-wide, intertribal non-profit organization with offices in Nevada City and Willow Creek, California. CIBA's primary mission is to preserve, promote, and perpetuate California Indian basketweaving traditions while providing a healthy physical, social, spiritual, and economic environment for weavers. The California Indian Basketweavers Association is a statewide, inter-tribal, non-profit organization with over 900 members. Our Resource Protection Program works to protect the native flora and fauna that are integral elements of traditional tribal lifeways, and to promote alternatives to pesticides wherever possible, particularly within Native communities. One of our biggest concerns is the use of herbicides to kill native vegetation during forestry operations.

The DPR has shown a high degree of commitment to addressing these concerns through the offices of the Environmental Monitoring Branch and the Worker Health and Safety Branch. Since 1997, the agency has conducted studies of herbicide residues on plants of importance to Native American basketweavers, water monitoring of herbicide runoff, and fish tissue residue studies in Indian country. We applaud these efforts, and we hope the Pesticide Registration Branch of the DPR will follow through on this important work by restricting the use of herbicides in forest settings where plants used for food, medicine, basketry or ceremonial purposes are killed and contaminated.

Our Northwestern Field Office serves over 250 basketweavers, and works to protect them and their families from health risks associated with pesticide use near their homes and gathering sites. Our findings have shown that basketweavers and gatherers, their families, and many other members of tribal communities continue to be at risk of exposure to pesticides due to gaps in the pesticide regulation system as currently implemented.

Under a grant from the U.S. Environmental Protection Agency, we researched pesticide use, water quality, and risks of contamination in Native American¹. We found that herbicide use on timberlands does pose a potential risk to Native people who hunt and fish near sprayed areas. Forestry herbicide use also puts drinking water sources at risk of contamination. Forestry herbicide use is the most prevalent pesticide use in the northwestern region, and in many parts of the state with tribal communities.

A major reason for these gaps is the failure of regulators and policymakers to understand traditional lifestyles of California Indians. These lifestyles include heavy reliance on forest plants and animals for sources of food, medicine, and materials for basketweaving and other practices that are integral parts of tribal culture and ceremony. Many forestry herbicides are not registered for use on food crops, yet native woodland plants that provide sources of food for tribal members are regularly contaminated by forestry herbicide use. Basketweaving plants, food plants, medicinal plants, firewood, and ceremonial plants are gathered in forested habitats on both public and private lands that may be subject to herbicides due to various land management practices, intensive forestry in particular. Domestic water supplies can also be contaminated by upstream spraying; this is of particular concern on the Yurok Reservation, where the vast majority of tribal members rely on surface water for drinking and other domestic uses.

These concerns are examples of lifestyles that are typically not considered in risk assessments, the pesticide registration process, the implementation and enforcement of the pesticide permitting process, and other aspects of California's pesticide regulation system. The Department of Pesticide Regulation (DPR) has a responsibility under Public Resources Code § 71113 to consult with affected communities, identify and address gaps in all existing programs and policies that fail to give equal protection to minority and low-income populations, and take other steps to ensure participation by affected communities and individuals. CIBA believes that DPR pesticide regulators must recognize California Indian basketweavers, gatherers, and other tribal members as a minority population that is at disproportionate risk of adverse impacts of pesticide use. Environmental Justice (EJ) is defined as the fair treatment and meaningful involvement of all people regardless of race, culture, and income with respect to the development, implementation, and enforcement of DPR programs and policies.

Below are comments that we hope will help improve the specific components of DPR's March 2003 draft EJ Implementation Program.

Environmental Justice Values

DPR's advisory committees—including the Pest Management Advisory Committee, the Pesticide Registration and Evaluation Committee, the Agricultural Pest Management Advisory Committee, and the School Integrated Pest Management Advisory Group-- should include members of representative minority and low-income communities that are at disproportionate risk of pesticide exposure. The Agricultural Pest Management Advisory Committee is currently closed to anyone other than pesticide industry representatives and agency staff. It is essential that EJ representatives be on hand at these meetings in order to ensure transparency in agency

¹ Kalt, J. and L. Harder. 2001. Pesticide Use in Northwestern California: Permits, Public Notice, and Reporting. California Indian Basketweavers Association. Willow Creek, CA.

dealings with industry. A tribal representative should be seated at each of these committees representing tribal concerns.

Since indigenous people's concerns are unique and often quite different from concerns of other minority and low-income communities, advisory committees should be formed at both local and regional levels as well as the state level to ensure adequate representation relative to local populations. Both tribal government and traditional members of tribes should be involved in the formation of these advisory committees; for more information, the DPR should consult the Guide on Consultation and Collaboration with Indian Tribal Governments and the Public Participation of Indigenous Groups and Tribal Members in Environmental Decision Making.²

Develop Communication to Ensure Meaningful Public Participation

To ensure that affected people have the opportunity to participate in the development of policies and regulations, representatives from affected communities will be included on every DPR advisory board.

In addition to advisory boards, community meetings should be utilized to encourage public participation by affected community members. Community meetings should be accessible to as many community members as possible, should foster an atmosphere of equal participation, and should be co-sponsored by one or more community members. Professional facilitators who are sensitive to, and trained in, environmental justice issues should be provided. Clear goals, objectives, and action items should be developed in conjunction with public participants, and agendas should be developed in consultation with community members.

Public participation should include the promise that the public's contribution will influence the decision. An effective public participation process meets the process needs of all participants, seeks out and facilitates the involvement of those potentially affected, and involves participants in defining how they participate. The process must provide participants with the information they need to participate in a meaningful way, and communicates to participants how their input was, or was not, utilized.

To enhance accessibility to information, progress reports should be prepared and posted on the website every year explicitly relating where and what pesticides have been reduced in areas impacting minority populations.

To improve access and utility of DPR data, especially pesticide use data. Specific pesticide "hot spot" or high use information should be made available on the DPR website that can be accessed by county. Information about the source and the commodity for which the use is occurring should be included. Pesticide use data should include the use of pesticides for landscaping when it involves large acreages such as golf courses, shopping malls, subdivisions & airports because

² Guide on Consultation and Collaboration with Indian Tribal Governments and the Public Participation of Indigenous Groups and Tribal Members in Environmental Decision Making, prepared by the National Environmental Justice Advisory Council (NEJAC) Indigenous Peoples Subcommittee, a federal advisory committee to the U.S. Environmental Protection Agency.
http://www.epa.gov/compliance/resources/publications/ej/ips_consultation_guide.pdf

such uses can input significant amounts of pesticides into the air, groundwater, and through surface runoff. If it is not possible to regulate private homeowner use of pesticides for landscaping through the permitting/reporting process, then DPR must cancel the use of toxicity class I and II chemicals for home use.

Pesticide Risk Assessments

To ensure meaningful and effective risk assessments for minority and/or low-income populations, unique exposure scenarios and cumulative impacts must be considered. Cumulative impacts must be truly comprehensive. It is not sufficient to evaluate only “common mechanism of toxicity” pesticides together to assess their cumulative impact. True cumulative impacts must include the multiple chemical burden from the many ubiquitous chemical exposures occurring from air pollution (industrial, agricultural, and pollutants from gasoline and diesel-burning engines), water contaminants from industrial polluters (for example, perchlorate contamination of irrigated water used on crops, from rocket fuel manufacturing processes), carpet, paint, wood preservatives, and plastics toxicant outgassing, and chemicals in cosmetics. Cumulative impacts must include the additive and synergistic effects of multiple pesticide exposure in our foods, water, household products, and air.

In addition to more complete and specific cumulative risk assessments, the pesticide registration process should require testing of “inert” ingredients, combinations of chemicals commonly used in combination, and all registered chemicals should have drinking water safety limits established prior to registration. Forestry herbicides not registered for use on food crops should not be permitted in areas known to be used for gathering native plants for use as traditional foods, medicines, or basketweaving materials.

Enforcement Program

Enforcement actions should be posted on the DPR website, with violators listed by business name and location. The public should be able to track the locations of known violations. This information may be important to compile accurate pesticide use data in order to argue for more restrictive regulations. Areas of greatest risk should be posted on the DPR website in map format.

While DPR has made progress in its efforts to gather information relative to pesticide use that disproportionately affects Indian basketweavers, we are concerned that in the area of enforcement, there has been little action to ensure that existing regulations designed to protect human health and the environment are enforced. We are concerned that rare, threatened, or endangered native plants and animals—many of which are culturally important species to Indian people--still do not receive effective protection under existing policies. We are also concerned that label restrictions for forestry use herbicides are seldom if ever monitored and enforced. Worker re-entry intervals, for example, for hexazinone herbicide products have not been brought into compliance for nine years, since the reregistration decision. Grazing and pine plantation uses are routinely violated for the use of triclopyr. The lack of enforcement of these label requirements and the lack of monitoring of their impacts suggests that they are virtually unregulated and pose unique and disproportionate risks to California Indian people.

Reduce Pesticide Use to Workers

Recognizing that the chief goal of integrated pest management is the reduction of pesticide use, DPR must set and achieve pesticide use reduction goals for all pesticides.³

DPR must also provide greater support for promotion of non-chemical and least-toxic methods of pest control. We recommend that the mill fee be increased to at least 35 mills, and that a differential mill assessment rate be used to encourage the use of less toxic pesticides. Fees must be increased across the board for other services, such as restricted use pesticide permits, in order to achieve the funding needs for the agency to accomplish pesticide reduction goals.

With regard to cancelled pesticides, human safety must take precedence over the supposed economic hardship that is used to justify allowing use of a cancelled pesticide. No “emergency exemptions” should ever be permitted for use of a pesticide that has been cancelled due to concerns about its safety for human health.

Thank you for the opportunity to comment and collaborate with you in the development of the implementation plan for ensuring that Environmental Justice values are upheld in all of your policies and programs.

Sincerely,



Vivian Parker
Resource Policy Analyst



Jennifer Kalt
Northwestern Resource Protection Associate

³ See General Accounting Office report, GAO-01-815 (2001). *Agricultural Pesticides: Management Improvements Needed to Further Promote Integrated Pest Management*. Report to U.S. Senate Committee on Agriculture, Nutrition, and Forestry. Washington, D.C.